

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

ROSENDO MANZANAREZ, *individually
and on behalf of others similarly situated,*

Plaintiff,

v.

MADERA COLLECTION SERVICES,

Defendant.

Case No. 1:23-cv-00258-JLT-BAM

**ORDER DISMISSING PLAINTIFF’S
COMPLAINT WITH PREJUDICE
PURSUANT TO RULE 41(b) AND
DISMISSING PLAINTIFF’S CLASS
WITHOUT PREJUDICE**

(Docs. 1, 22)

The Court dismissed Plaintiff’s complaint for failure to establish Article III standing. (Doc. 22.) The Court granted Plaintiff 21 days to amend his complaint to show a concrete and particularized injury. (*Id.* at 8–9.) Plaintiff has failed to do so.

Federal Rule of Civil Procedure 41(b) allows the Court to dismiss an action if the plaintiff fails to comply with a court order. Fed. R. Civ. P. 41(b).¹ “By its plain text, a Rule 41(b) dismissal . . . requires a court order with which an offending plaintiff failed to comply.” *Applied Underwriters, Inc. v. Lichtenegger*, 913 F.3d 884, 891 (9th Cir. 2019) (internal quotation marks, citation, and footnote omitted).

¹ Similarly, this District’s Local Rule 110 states that “[f]ailure of counsel or of a party to comply with these Rules *or with any order of the Court* may be grounds for imposition by the Court of *any and all sanctions* authorized by statute or Rule or within the inherent power of the Court.” E.D. Cal. L.R. 110 (emphases added). The Court acts pursuant to this District’s Local Rule 110 as well in dismissing Plaintiff’s case.

1 The Court must analyze five factors “before dismissing a case pursuant to Rule 41(b): ‘the
2 public’s interest in expeditious resolution of litigation; (2) the court’s need to manage its docket;
3 (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of cases on
4 their merits; and (5) the availability of less drastic alternatives.’” *Id.* (quoting *Yourish v. Cal.*
5 *Amplifier*, 191 F.3d 983, 990 (9th Cir. 1999)).

6 In *Edwards v. Marin Park, Inc.*, the Ninth Circuit held that in limited circumstances when
7 a plaintiff fails to “give the court notice of intent not to file an amended complaint,” and “instead
8 simply fail[s] to take any action,” its prior Rule 41(b) precedent of dismissal applies. 356 F.3d
9 1058, 1065 (9th Cir. 2004) (relying on *Yourish*, 191 F.3d at 986 and *Ferdik v. Bonzelet*, 963 F.2d
10 1258, 1260 (9th Cir. 1992)). In these situations, “resources continue to be consumed by a case
11 sitting idly on the court’s docket.” *Id.* Thus, the *Edwards* Court reasoned, “[t]he failure of the
12 plaintiff eventually to respond to the court’s ultimatum—either by amending the complaint or by
13 indicating to the court that it will not do so—is properly met with the sanction of a Rule 41(b)
14 dismissal.” *Id.* This rule does not apply when “the plaintiff makes an affirmative *choice* not to
15 amend, *and clearly communicates that choice to the court*, [as] there has been no disobedience to
16 a court’s order to amend[.]” *Id.* (first emphasis in original, second emphasis added).

17 In its order, the Court advised Plaintiff that failure to comply would result in dismissal if
18 or failed to communicate his next steps to the Court by the stated deadline. (Doc. 22 at 8.) The
19 Court specifically invoked Rule 41(b) and ordered Plaintiff to take *some* kind of action in
20 response to its order. Plaintiff has failed to do so (Doc. 22). Rule 41(b) sanction is therefore
21 appropriate. *Edwards*, 356 F.3d at 1065. The Court is satisfied that Plaintiff had more than
22 adequate notice that such inaction would result in dismissal of his case.

23 Furthermore, the Court is satisfied that “at least three factors strongly support dismissal.”
24 *Yourish*, 191 F.3d at 990 (internal quotation marks and citation omitted). As to the first factor,
25 “[t]he public’s interest in expeditious resolution of litigation always favors dismissal.”
26 *Pagtalunan v. Galaza*, 291 F.3d 639, 642 (9th Cir. 2002). The second factor is also easily met
27 here, as “[t]he trial judge is in the best position to determine whether the delay in a particular case
28 interferes with docket management and the public interest.” *Id.* (citation omitted). The Eastern

1 District of California has a judicial resource emergency, and “[i]t is incumbent upon the Court to
2 manage its docket without being subject to routine noncompliance of litigants[.]” *Id.* (citation
3 omitted); *see also* Doc. 13 (“ongoing judicial resource emergency in this District”) *see also*
4 *Edwards*, 356 F.3d at 1065.

5 The third factor looks to prejudice faced by the Defendant. More than 21 days have
6 passed since the dismissal and Plaintiff has failed to “come forth with an excuse for his delay.” *In*
7 *re Eisen*, 31 F.3d 1447, 1453 (9th Cir. 1994) (internal quotation marks and citation omitted).
8 “The law presumes injury from unreasonable delay,” however this presumption of prejudice may
9 be rebutted “if there is a showing that no actual prejudice occurred[.]” *Id.* at 1452–53 (internal
10 quotation marks and citation omitted). Plaintiff has failed to state any reason excusing his
11 inaction. *See Pagtalunan*, 291 F.3d at 642 (“[W]e have also related the risk of prejudice to the
12 plaintiff’s reason for defaulting.”) (citation omitted). In other words, Plaintiff has failed to rebut
13 this presumption. This factor weighs in favor of dismissal.

14 Also, as noted, the Court warned Plaintiff that the failure to file an amended Complaint or
15 a notice of dismissal, or to otherwise take action would result in a Rule 41(b) dismissal of his
16 case. Thus, no less drastic alternative to dismissal is available. *Yourish*, 191 F.3d at 990.
17 Accordingly, the Court determines that Rule 41(b) dismissal is appropriate. The Court will
18 therefore dismiss with prejudice the named Plaintiff in this case and dismiss his putative class
19 without prejudice.

20 CONCLUSION

21 Based upon the foregoing, the Court **ORDERS**:

- 22 (1) Rosendo Manzanarez’s Complaint is **DISMISSED WITH PREJUDICE** pursuant to
23 Federal Rule of Civil Procedure 41(b) for failing to timely comply with the Court’s
24 previous Order and ultimatum (Doc. 22). However, claims contained within
25 Plaintiff’s putative class are **DISMISSED WITHOUT PREJUDICE**.

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1 (2) The Clerk of Court is directed to **CLOSE THIS CASE**.

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3 IT IS SO ORDERED.

4 Dated: **April 17, 2024**


UNITED STATES DISTRICT JUDGE